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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 THE ESTATE OF RAUL HERRERA III) Case No: 5:17-CV-00082 SP
11 and JOE HERRERA,) Hon. Sheri Pym
12 Plaintiffs,) STIPULATED PROTECTIVE
13 v.) ORDER
14 CITY OF ONTARIO, BRAD KAYLOR,)
15 ZACH MCWATERS, SCOTT SCHAFFER,)
16 MICHAEL MORA and DOES 1 through)
17 10, inclusive,)
18 Defendants.)
19

20 1. A. PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely
22 to involve production of confidential, proprietary, or private
23 information, including confidential personnel records of peace
24 officers, for which special protection from public disclosure
25 and from use for any purpose other than prosecuting this
26 litigation would be warranted. Accordingly, the parties hereby
27 stipulate to and petition the Court to enter the following
28 Stipulated Protective Order. The parties acknowledge that this

1 Stipulated Protective Order does not confer blanket protections
2 on all disclosures or responses to discovery and that the
3 protection it affords extends only to the limited information or
4 items that are entitled under the applicable legal principles to
5 treatment as confidential. The parties further acknowledge, as
6 set forth in section 12, below, that this Stipulated Protective
7 Order creates no entitlement to file confidential information
8 under seal; Civil Local Rule 79-5 sets forth the procedures that
9 must be followed and reflects the standards that will be applied
10 when a party seeks permission from the court to file material
11 under seal. The parties further acknowledge that nothing in
12 this Stipulated Protective Order shall preclude either party
13 from asserting that a document is of such a confidential or
14 private nature that it should not be produced or that it should
15 only be produced in redacted form, or from seeking a protective
16 order to preclude the production of certain documents.

17 **B. GOOD CAUSE STATEMENT**

18 This action is likely to involve confidential information,
19 including personnel records of the Defendant police officers,
20 information otherwise generally unavailable to the public, or
21 which may be privileged or otherwise protected from disclosure
22 under state or federal statutes, court rules, case decisions or
23 common law. Accordingly, to expedite the flow of information, to
24 facilitate the prompt resolution of disputes over
25 confidentiality of discovery materials, to adequately protect
26 information the parties are entitled to keep confidential, to
27 ensure that the parties are permitted reasonable necessary uses
28 of such material in preparation for and in the conduct of trial,

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1 to address their handling at the end of the litigation, and
2 serve the ends of justice, a protective order for such
3 information is justified in this matter. It is the intent of the
4 parties that the information will not be designated as
5 confidential for tactical reasons and that nothing be so
6 designated without a good faith belief that it has been
7 maintained in a confidential, non-public manner, and there is
8 good cause why it should not be part of the public record of
9 this case.

10 **2. DEFINITIONS**

11 2.1. Party: any party to this action, including all of its
12 officers, directors, employees, consultants, retained experts,
13 and outside counsel (and their support staff).

14 2.2. Disclosure or Discovery Material: all items or
15 information, regardless of the medium or manner generated,
16 stored, or maintained (including, among other things, testimony,
17 transcripts, or tangible things) that are produced or generated
18 in disclosures or responses to discovery in this matter.

19 2.3. "Confidential" Information or Items: information
20 (regardless of how generated, stored or maintained) or tangible
21 things that contain information involving trade secrets,
22 confidential business, personal or financial information or
23 confidential personnel records.

24 2.4. Receiving Party: a Party that receives Disclosure or
25 Discovery Material from a Producing Party.

26 2.5. Producing Party: a Party or non-party that produces
27 Disclosure or Discovery Material in this action.
28

1 2.6. Designating Party: a Party or non-party that
2 designates information or items that it produced in disclosures
3 or in responses to discovery as "Confidential."

4 2.7. Protected Material: any Disclosure or Discovery
5 Material that is designated as "Confidential."

6 2.8 Outside Counsel: attorneys (as well as their support
7 staff) who are not employees of a Party but who are retained to
8 represent or advise a Party in this action.

9 2.9 Expert: a person with specialized knowledge or
10 experience in a matter pertinent to the litigation who has been
11 retained by a Party or its counsel to serve as an expert witness
12 or as a consultant in this action and who is not a past or a
13 current employee of a Party or of a competitor of a Party and
14 who, at the time of retention, is not anticipated to become an
15 employee of a Party or a competitor of a Party. This definition
16 includes a professional, jury or trial consultant retained in
17 connection with this litigation.

18 2.10 Professional Vendors: persons or entities that provide
19 litigation support services (e.g., photocopying, videotaping,
20 translating, preparing exhibits or demonstrations, organizing,
21 storing, retrieving data in any form or medium, etc.) and their
22 employees and subcontractors.

23 3. **SCOPE**

24 The protections conferred by this Stipulated Protective
25 Order cover not only Protected Material (as defined above), but
26 also any information copied or extracted therefrom, as well as
27 all copies, excerpts, summaries, or compilations thereof, plus
28 testimony, conversations, or presentations by parties or counsel

1 to or in court or in other settings that might reveal Protected
2 Material.

3 Any use of Protected Material at trial shall be governed by
4 the orders of the trial judge. This Order does not govern the
5 use of Protected Material at trial.

6 4. DURATION

7 Once a case proceeds to trial, all of the information that
8 was designated as confidential or maintained pursuant to this
9 protective order becomes public and will be presumptively
10 available to all members of the public, including the press,
11 unless compelling reasons supported by specific factual findings
12 to proceed otherwise are made to the trial judge in advance of
13 the trial. See Kamakana v. City and County of Honolulu, 447 F.3d
14 1172, 1180-81 (9th Cir. 2006) (distinguishing "good cause"
15 showing for sealing documents produced in discovery from
16 "compelling reasons" standard when merits-related documents are
17 part of court record). Accordingly, the terms of this protective
18 order do not extend beyond the commencement of the trial.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1. Exercise of Restraint and Care in Designating Material
21 for Protection. Each Party or non-party that designates
22 information or items for protection under this Stipulated
23 Protective Order must take care to limit any such designation to
24 specific material that qualifies under the appropriate legal
25 standards. A Designating Party must take care to designate for
26 protection only those parts of material, documents, items, or
27 oral or written communications that qualify - so that other
28 portions of the material, documents, items, or communications

1 for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Stipulated Protective
3 Order.

4 Mass, indiscriminate, or routinized designations are
5 prohibited. Designations that are shown to be clearly
6 unjustified or that have been made for an improper purpose
7 (e.g., unnecessarily to encumber the case development process or
8 to impose unnecessary expenses or burdens on other parties) may
9 expose the Designating Party to sanctions.

10 If it comes to a Party's or a non-party's attention that
11 information or items that it designated for protection do not
12 qualify for protection, that Party or non-party must promptly
13 notify all other parties that it is withdrawing or modifying the
14 mistaken designation.

15 5.2. Manner and Timing of Designations. Except as
16 otherwise provided in this Stipulated Protective Order (see,
17 e.g., second paragraph of section 5.2(a), below), or as
18 otherwise stipulated or ordered, material that qualifies for
19 protection under this Stipulated Protective Order must be
20 clearly so designated before the material is disclosed or
21 produced.

22 Designation in conformity with this Stipulated Protective
23 Order requires:

24 a. For information in documentary form (apart from
25 transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" at the bottom-right of each page that
28 contains Protected Material. If only a portion or portions

1 of the material on a page qualifies for protection, the
2 Producing Party must also clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the
4 margins).

5 A Party or non-party that makes original documents or
6 materials available for inspection need not designate them
7 for protection until after the inspecting Party has
8 indicated which material it would like copied and produced.
9 During the inspection and before the designation, all of
10 the material made available for inspection shall be deemed
11 "CONFIDENTIAL." After the inspecting Party has identified
12 the documents it wants copied and produced, the Producing
13 Party must determine which documents, or portions thereof,
14 qualify for protection under this Stipulated Protective
15 Order. Then, before producing the specified documents, the
16 Producing Party must affix the appropriate legend
17 ("CONFIDENTIAL") at the bottom-right of each page that
18 contains Protected Material. If only a portion or portions
19 of the material on a page qualifies for protection, the
20 Producing Party must also clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the
22 margins).

23 b. For testimony given in deposition or in other
24 pretrial or trial proceedings, that the Party or non-party
25 offering or sponsoring the testimony identify on the
26 record, before the close of the deposition, hearing, or
27 other proceeding, all protected testimony, and further
28 specify any portions of the testimony that qualify as

1 "CONFIDENTIAL." When it is impractical to identify
2 separately each portion of testimony that is entitled to
3 protection, and when it appears that substantial portions
4 of the testimony may qualify for protection, the Party or
5 non-party that sponsors, offers, or gives the testimony may
6 invoke on the record (before the deposition or proceeding
7 is concluded) a right to have up to 20 days to identify the
8 specific portions of the testimony as to which protection
9 is sought and to specify the level of protection being
10 asserted ("CONFIDENTIAL"). Only those portions of the
11 testimony that are appropriately designated for protection
12 within the 20 days shall be covered by the provisions of
13 this Stipulated Protective Order.

14 Transcript pages containing Protected Material must be
15 separately bound by the court reporter, who must affix to
16 the top of each such page the legend "CONFIDENTIAL," as
17 instructed by the Party or non-party offering or sponsoring
18 the witness or presenting the testimony.

19 c. For information produced in some form other than
20 documentary, and for any other tangible items, that the
21 Producing Party affix in a prominent place on the exterior
22 of the container or containers in which the information or
23 item is stored the legend "CONFIDENTIAL." If only portions
24 of the information or item warrant protection, the
25 Producing Party, to the extent practicable, shall identify
26 the protected portions, specifying whether they qualify as
27 "CONFIDENTIAL."
28

1 5.3. Inadvertent Failures to Designate. If timely
2 corrected, an inadvertent failure to designate qualified
3 information or items as "CONFIDENTIAL" does not, standing alone,
4 waive the Designating Party's right to secure protection under
5 this Stipulated Protective Order for such material. If material
6 is appropriately designated as "CONFIDENTIAL" after the material
7 was initially produced, the Receiving Party, on timely
8 notification of the designation, must make reasonable efforts to
9 assure that the material is treated in accordance with the
10 provisions of this Stipulated Protective Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1. Timing of Challenges. Unless a prompt challenge to a
13 Designating Party's confidentiality designation is necessary to
14 avoid foreseeable substantial unfairness, unnecessary economic
15 burdens, or a later significant disruption or delay of the
16 litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge
18 promptly after the original designation is disclosed.

19 6.2. Meet and Confer. A Party that elects to initiate a
20 challenge to a Designating Party's confidentiality designation
21 must do so in good faith and pursuant to the dispute resolution
22 process under Local Rule 37-1, et seq.

23 6.3. Burden of Persuasion. The burden of persuasion in any
24 such challenge proceeding shall be on the Designating Party.
25 Frivolous challenges, and those made for an improper purpose
26 (e.g., to harass or impose unnecessary expenses and burdens on
27 other parties) may expose the Challenging Party to sanctions.
28 Until the Court rules on the challenge, all parties shall

1 continue to afford the material in question the level of
2 protection to which it is entitled under the Producing Party's
3 designation.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1. Basic Principles. A Receiving Party may use Protected
6 Material that is disclosed or produced by another Party or by a
7 non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such
9 Protected Material may be disclosed only to the categories of
10 persons and under the conditions described in this Stipulated
11 Protective Order. When the litigation has been terminated, a
12 Receiving Party must comply with the provisions of section 13,
13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a
15 Receiving Party at a location and in a secure manner that
16 ensures that access is limited to the persons authorized under
17 this Stipulated Protective Order.

18 7.2. Disclosure of "CONFIDENTIAL" Information or Items.
19 Unless otherwise ordered by the Court or permitted in writing by
20 the Designating Party, a Receiving Party may disclose any
21 information or item designated CONFIDENTIAL only to:

22 a. the Receiving Party's Outside Counsel of record in
23 this action and said Counsel's paralegals, as well as other
24 employees of said Counsel to whom it is reasonably necessary to
25 disclose the information for this litigation and who have signed
26 the "Agreement to Be Bound by Protective Order" that is attached
27 hereto as Exhibit A;
28

1 b. the officers, directors, and employees of the
2 Receiving Party to whom disclosure is reasonably necessary for
3 this litigation and who have signed the "Agreement to Be Bound
4 by Protective Order" (Exhibit A);

5 c. Experts (as defined in this Stipulated Protective
6 Order) of the Receiving Party to whom disclosure is reasonably
7 necessary for this litigation and who have signed the "Agreement
8 to Be Bound by Protective Order" (Exhibit A);

9 d. the Court and its personnel;

10 e. court reporters, their staffs, and professional
11 vendors to whom disclosure is reasonably necessary for this
12 litigation;

13 f. professional jury or trial consultants, mock jurors,
14 and Professional Vendors to whom disclosures is reasonably
15 necessary for this lawsuit and who have signed the
16 "Acknowledgement and Agreement to be Bound"(Exhibit A);

17 g. during their depositions, witnesses, and attorneys for
18 the witnesses, in the action to whom disclosure is reasonably
19 necessary, provided that they have signed the "Acknowledgement
20 and Agreement to be Bound"(Exhibit A). Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal
22 Protected Material must be separately bound by the court
23 reporter and may not be disclosed to anyone except as permitted
24 under this Stipulated Protective Order.

25 h. the author of the document or the original source of
26 the information.
27
28

1 i. Any mediator or settlement officer, and their
2 supporting personnel, mutually agreed upon by any of the parties
3 engaged in settlement discussions.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
5 **LITIGATION**

6 If a Receiving Party is served with a subpoena or an order
7 issued in other litigation that would compel disclosure of any
8 information or items designated in this action as
9 "CONFIDENTIAL," the Receiving Party must:

10 (a) notify the Designating Party, in writing (by fax
11 or email, if possible) immediately after receiving the
12 subpoena or order. Such notification must include a copy
13 of the subpoena or court order;

14 (b) immediately inform in writing the Party who caused
15 the subpoena or order to issue in the other litigation that
16 some or all the material covered by the subpoena or order
17 is the subject of this Stipulated Protective Order. In
18 addition, the Receiving Party must deliver a copy of this
19 Stipulated Protective Order promptly to the Party in the
20 other action that caused the subpoena or order to issue;
21 and

22 (c) cooperate with respect to all reasonable
23 procedures sought to be pursued by the Designating Party
24 whose Protected Material may be affected.

25 The purpose of imposing these duties is to alert the
26 interested parties to the existence of this Stipulated
27 Protective Order and to afford the Designating Party in this
28 case an opportunity to try to protect its confidentiality

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1 interests in the court from which the subpoena or order issued.
2 If the Designating Party timely seeks a protective order in
3 relation to the subpoena or order issued in other litigation,
4 the Party served with the subpoena or order shall not produce
5 any information designated in this lawsuit as "CONFIDENTIAL"
6 before the determination by the court from which the subpoena or
7 order issued, unless the party has obtained the Designating
8 Party's permission. The Designating Party shall bear the
9 burdens and the expenses of seeking protection in that court of
10 its confidential material - and nothing in these provisions
11 should be construed as authorizing or encouraging a Receiving
12 Party in this action to disobey a lawful directive from another
13 court.

14 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
15 **THIS LITIGATION**

16 (a) The terms of this Order are applicable to information
17 produced by a Non-Party in this Action and designated as
18 "CONFIDENTIAL." Such information produced by Non-Parties in
19 connection with this litigation is protected by the remedies and
20 relief provided by this Order. Nothing in these provisions
21 should be construed as prohibiting a Non-Party from seeking
22 additional protections.

23 (b) In the event that a Party is required, by a valid
24 discovery request, to produce a Non-Party's confidential
25 information in its possession, and the Party is subject to an
26 agreement with the Non-Party not to produce the Non-Party's
27 confidential information, then the Party shall:
28

1 (1) promptly notify in writing the Requesting Party
2 and the Non-Party that some or all of the information
3 requested is subject to a confidentiality agreement with a
4 Non-Party;

5 (2) promptly provide the Non-Party with a copy of the
6 Stipulated Protective Order in this Action, the relevant
7 discovery request(s), and a reasonably specific description
8 of the information requested; and

9 (3) make the information requested available for
10 inspection by the Non-Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from
12 this Court within 14 days of receiving the notice and
13 accompanying information, the Receiving Party may produce the
14 Non-Party's confidential information responsive to the discovery
15 request. If the Non-Party timely seeks a protective order, the
16 Receiving Party shall not produce any information in its
17 possession or control that is subject to the confidentiality
18 agreement with the Non-Party before a determination by the
19 Court. Absent a court order to the contrary, the Non-Party shall
20 bear the burden and expense of seeking protection in this Court
21 of its Protected Material.

22 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or
24 otherwise, it has disclosed Protected Material to any person or
25 in any circumstance not authorized under this Stipulated
26 Protective Order, the Receiving Party must immediately (a)
27 notify in writing the Designating Party of the unauthorized
28 disclosures, (b) use its best efforts to retrieve all copies of

1 the Protected Material, (c) inform the person or persons to
2 whole unauthorized disclosures were made of all the terms of
3 this Stipulated Protective Order, and (d) request such person or
4 persons to execute the "Acknowledgment and Agreement to Be
5 Bound" that is attached hereto as Exhibit A.

6 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
7 **MATERIAL**

8 When a Producing Party gives notice to Receiving Parties
9 that certain inadvertently produced material is subject to a
10 claim of privilege or other protection, the obligations of the
11 Receiving Parties are those set forth in Federal Rule of Civil
12 Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order
14 that provides for production without prior privilege review.
15 Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
16 the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client
18 privilege or work product protection, the parties may
19 incorporate their agreement in the stipulated protective order
20 submitted to the Court.

21 **12. FILING PROTECTED MATERIAL**

22 Without written permission from the Designating Party or a
23 Court order secured after appropriate notice to all interested
24 persons, a party may not file in the public record in this
25 action any protected material. A party that seeks to file under
26 seal any protected material must comply with Civil Local Rule
27 79-5. Protected Material may only be filed under seal pursuant
28

1 to a Court order authorizing the sealing of the specific
2 Protected Material at issue.

3 **13. FINAL DISPOSITION**

4 Upon written request after the settlement or other
5 termination of this action, each receiving party must return all
6 protected material to the producing party or destroy such
7 material within sixty days after the final termination of this
8 action. As used in this subdivision, "all protected material"
9 includes all copies (except as designated below), abstracts,
10 compilations, summaries or any other form of reproducing or
11 capturing any of the protected material. The receiving party may
12 destroy some or all of the protected material instead of
13 returning it. Whether the protected material is returned or
14 destroyed, the receiving party must submit a written
15 certification to the producing party (and, if not the same
16 person or entity, to the designating party) by the sixty-day
17 deadline affirming that all the protected material was returned
18 or destroyed and that the receiving party has not retained any
19 copies, abstracts, compilations, summaries or other forms of
20 reproducing or capturing any of the protected material.
21 Notwithstanding this provision, counsel are entitled to retain
22 an archival copy of all pleadings, motion papers, transcripts,
23 legal memoranda, correspondence or attorney work product, even
24 if such materials contain protected material. Any such archival
25 copies that contain or constitute protected material remain
26 subject to this stipulated protective order as set forth in
27 section 4 (duration), above.
28

14. **MISCELLANEOUS**

14.1. Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

14.2. Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

15. **VIOLATION**

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

PEREIRA LAW

By: /S/CHRISTIAN F. PEREIRA
CHRISTIAN F. PEREIRA
Attorneys for Plaintiffs

COTA COLE & HUBER LLP

By: /S/DENNIS M. COTA
DENNIS M. COTA
Attorneys for Defendants

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: May 24, 2017



HON. SHERI PYM
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2
3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4
5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under
7 penalty of perjury that I have read in its entirety and
8 understand the Stipulated Protective Order that was issued by
9 the United States District Court for the Central District of
10 California on [date] in the case of The Estate of Raul Herrera
11 III, et al., v. City of Ontario, et al., Case No. 5:17-cv-82 SP.
12 I agree to comply with and to be bound by all the terms of this
13 Stipulated Protective Order and I understand and acknowledge
14 that failure to so comply could expose me to sanctions and
15 punishment in the nature of contempt. I solemnly promise that I
16 will not disclose in any manner any information or item that is
17 subject to this Stipulated Protective Order to any person or
18 entity except in strict compliance with the provisions of this
19 Order. I further agree to submit to the jurisdiction of the
20 United States District Court for the Central District of
21 California for the purpose of enforcing the terms of this
22 Stipulated Protective Order, even if such enforcement
23 proceedings occur after termination of this action. I hereby
24 appoint _____ [print or type full name] of
25 _____ [print or type full
26 address and telephone number] as my California agent for service
27 of process in connection with this action or any proceedings
28 related to enforcement of this Stipulated Protective Order.

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1 Date: _____ City and State

2 where sworn and signed: _____

3 Printed name: _____

4 Signature: _____